

CALENDAR ITEM

C52

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S 38

08/09/16
W 40983
V. Perez

**CONSIDER A 30-YEAR MODIFICATION OF THE
STATE'S RIGHT OF SURFACE ENTRY ON
APPROXIMATELY 280 ACRES OF STATE'S RESERVED
MINERAL INTEREST, SCHOOL LANDS,
ASSESSOR'S PARCEL NUMBER 253-390-57,
ADMINISTERED BY THE COMMISSION AS TRUSTEE,
LOCATED IN THE SW1/4 OF SW1/4, THE E1/2 OF SW1/4, AND
THE NE1/2 WITHIN SECTION 36, TOWNSHIP 12 SOUTH,
RANGE 8 EAST, SBBM, IN THE OCOTILLO WELLS AREA,
SAN DIEGO COUNTY**

APPLICANT:

Gildred Solar, LLC

AREA, LAND TYPE, AND LOCATION:

Approximately 280 acres of State 100 percent reserved mineral interest (RMI) school lands, located about 5 miles south of the community of Ocotillo Wells, in Section 36, T12S, R8E, SBM, San Diego County (Assessor Parcel Number 253-390-57 & 58). Gildred Solar, LLC (Gildred), a California Corporation, is the surface owner of the parcel (see Exhibit A and Exhibit B, attached).

AUTHORIZED USE:

Modification of the State's right of surface entry to allow for the orderly development and financing of a photovoltaic solar farm, and to protect against disturbance of operations by the potential development of the Commission's mineral reservation.

LEASE TERM:

30 years beginning August 9, 2016, through August 8, 2046.

CONSIDERATION:

\$630 per year for thirty years adjusted annually for inflation by the CPI.

BACKGROUND:

On March 25, 2016, Gildred submitted an application for a Modification of the

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State's Right of Surface Entry for mineral interest managed by the Commission. The project area has been permitted by the County of San Diego for construction of a solar facility on approximately 440 acres of land owned by Gildred. Of those 440 acres, the State retains 280 acres of a 100 percent RMI (subject parcel). The State sold its surface interest on July 14, 1955.

The proposed solar facility consists of the construction and operation of an approximately 336-acre photovoltaic or concentrated photovoltaic, solar farm on the approximately 440-acre site with 1.74 acres of offsite disturbance for access improvements. Photovoltaic concerns the conversion of solar energy into electricity using semiconducting materials.

Gildred is seeking a Modification of the State's Right of Surface Entry to prevent the possibility of future conflict between development of the school land minerals and operation of the solar facility. Gildred wants to protect its significant investment in the project by limiting the State's right to develop its RMI that may hinder or harm the efficiency or operations of the solar facility over its projected economic life of 30 years. The subject parcel is currently vacant and the Commission has never issued any leases or permits on the site.

Under Public Resources Code section 6401, subdivision (b), added in 1969, the Commission may limit its right to enter the surface overlaying the State's RMI, to a depth of 500 feet below the surface, to allow for the orderly use and development of lands where the State has sold the surface but retained the mineral interest. Under this statute, the Commission may modify its right of surface entry upon findings that; there are no known deposits of commercially valuable minerals in and above a plane located 500 feet below the surface of the lands; and that such modifications are not inconsistent with federal laws pertaining to the grant of school lands.

Consequently, one of the essential elements to such applications is the submission of a detailed Mineral Evaluation Report prepared by a California Professional Geologist. This report must document what mineral potential exists within 500 feet of the surface and also evaluate what mineral potential may exist at greater depths such as the existence of oil and gas or geothermal resources. Gildred submitted a Mineral Evaluation Report prepared by California Professional Geologist, Steve Kupferman (License No. 3844) of the Lilburn Corporation.

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MINERAL EVALUATION REPORT:

The report evaluated the mineral potential from the surface to a depth of 500 feet, concluding that there is no known commercially valuable mineral potential in and above that plane. Commission staff concurs that there is low mineral development potential for solid minerals, precious and base metals, industrial minerals, oil, gas, and geothermal resources on the site.

The parcel is characterized by alluvial sedimentary deposits consisting mainly of unconsolidated sand, silt, clay, and gravel. There is no evidence of active or historic mineral prospects, mining operations, or oil and gas wells on the parcel, and historically wildcat oil wells drilled in the project vicinity have not exhibited any oil or gas potential. The potential for the occurrence of gold and precious metals is considered nonexistent. There is low potential for the occurrence of gypsum and other related industrial minerals on the subject parcel, despite being located three miles north of the prolific Plaster City Gypsum Quarry, which has been in operation since the early 1900s. The potential for the development of sand and gravel deposits suitable for use as construction sand and road fill is also low. The factors limiting the development include variability in lateral and vertical extent, increased processing costs, and the haul distance to any market. The parcel is located near a state park, which could hinder development and increase permitting costs.

STAFF ANALYSIS AND RECOMMENDATION:

This modification of the State's Right of Surface Entry is in the State's best interests because it will facilitate development of a large scale solar photovoltaic facility. This will, in turn, help achieve the climate goals of AB 32 through the development and expansion of the State's renewable energy portfolio. This expansion is realized through the success of projects, such as this proposed solar facility. Despite the temporary loss of mineral entry onto a low mineral potential subject parcel, the State will benefit from the new energy production resulting from the alternative renewable technology of a solar facility. In addition, this subject modification is for a limited term of 30 years in order to preserve the ability to enter the surface if future mineral resources are discovered. Therefore, staff recommends the approval of the proposed modification of the State's Right of Surface Entry.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code section 6401, subdivision (b).

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OTHER PERTINENT INFORMATION:

1. As consideration for the Modification of the State's Right of Surface Entry, Gildred shall pay an annual fee of \$630, adjusted annually by the CPI index. This consideration value was determined using methods authorized by the Commission under Title 2, California Code of Regulations, section 2003.
2. To qualify for a Modification of the State's Right of Surface Entry, there must be a plan of development for the property approved by a government entity such as a federal or state agency, county or city, along with pertinent California Environmental Quality Act (CEQA) documentation.
3. On January 24, 2014, the County of San Diego certified a Mitigated Negative Declaration for the solar project (State Clearinghouse No. 2013041078).
4. Gildred has acquired a Major Use Permit and Preliminary Grading and Improvement Plan from the County of San Diego. The Major Use Permit was approved on January 24, 2014, and extended on April 22, 2016.
5. Modification of a Right of Surface Entry lease is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

6. The Modification of the State's Right of Surface Entry is for a period of 30 years, consistent with the expected life of the solar facility. Should the facility exceed the 30-year term of the Modification of the State's Right of Surface Entry, Gildred may submit a new application.
7. The Modification of the State's Right of Surface Entry is not inconsistent with federal statutes pursuant to 43 U.S.C. section 870 because the State is not alienating its mineral interest and retains the ability to develop any minerals at the end of the modification's term.
8. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the

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protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Proposed Modification of the State's Right of Surface Entry

RECOMMENDED ACTION:

It is recommended that the Commission:

STATE'S BEST INTERESTS:

- 1. Find that there are no known commercially valuable minerals located on the subject parcel in and above a plane of 500 feet.
- 2. Find that the proposed modification will permit the orderly use and development of the lands for alternative energy.
- 3. Find that the proposed modification is not inconsistent with federal statutes pursuant to 43 U.S.C. section 870.

AUTHORIZATION:

- 1. Authorize the Executive Officer to issue to Gildred Solar, LLC, a Modification of the State's Right of Surface Entry, surrendering any and all rights to the State's right to enter upon those lands described in Exhibit A and Exhibit B, attached hereto, and by reference made a part hereof, for purposes of mineral development in and above a plane 500 feet below the surface, for a term of 30 years; consideration in the amount of \$630 per year with an annual Consumer Price Index adjustment.

EXHIBIT A

W 40983

LAND DESCRIPTION

That certain parcel of State School Land in San Diego County, State of California, more particularly described as follows:

The SW $\frac{1}{4}$ of SW $\frac{1}{4}$, the E $\frac{1}{2}$ of SW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of Section 36, Township 12 South, Range 8 East, San Bernardino Meridian, as shown on that Official U.S. Government Township Plat approved January 16, 1885.

END OF DESCRIPTION

Prepared 05/03/2016 by the California State Lands Commission Boundary Unit.



Exhibit B

W 40983

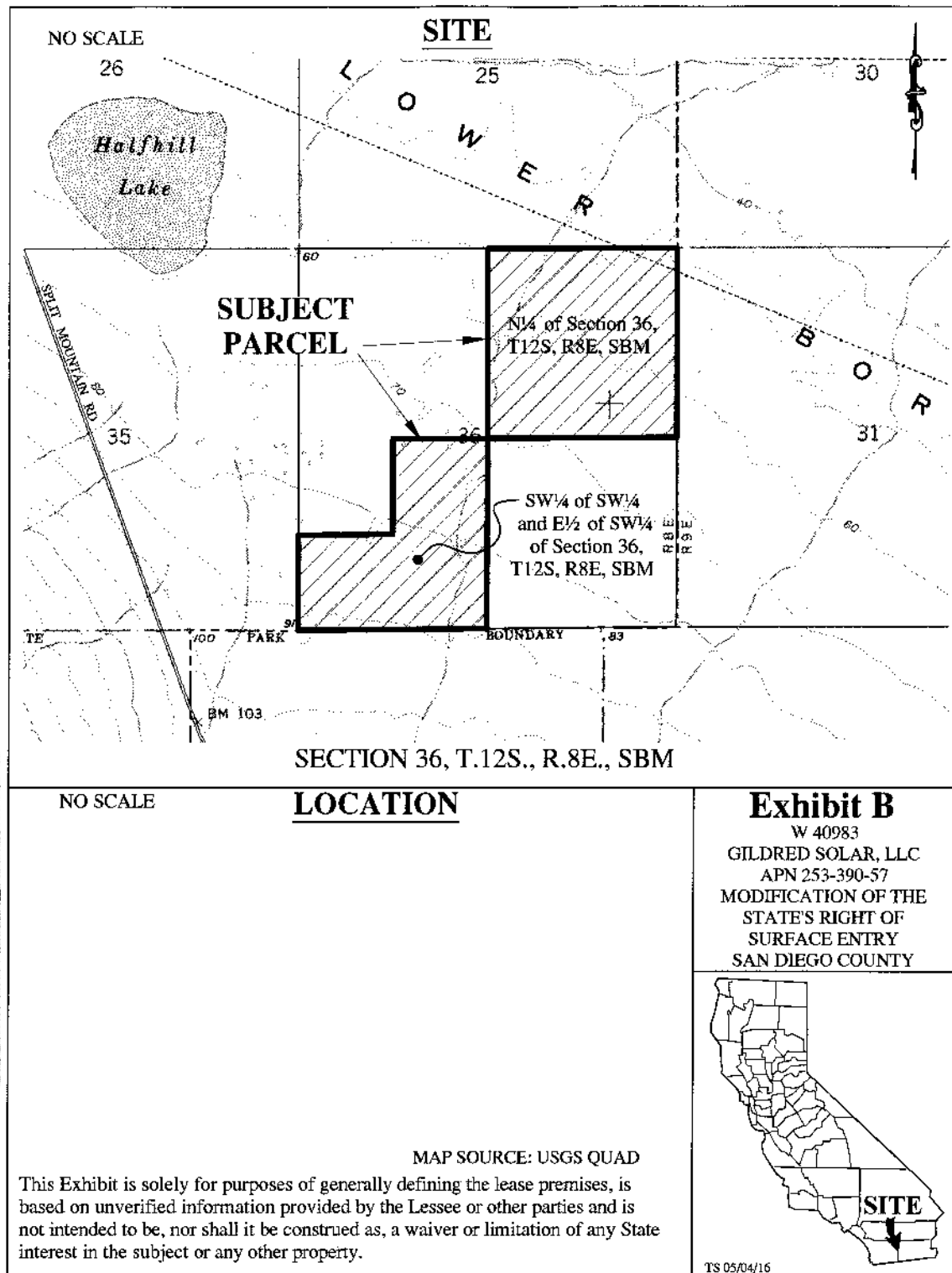


EXHIBIT C

W 40983

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CSLC File No.: W40983

Portions of APNs 253-390-57
County of San Diego

Modification of the State's Right of Surface Entry

Whereas, the State of California, acting by and through the California State Lands Commission (Commission or State), on July 14, 1955, conveyed by state patent certain lands described in exhibit A, subject to a mineral reservation with surface entry rights; and

Whereas, the surface estate overlaying the lands described in exhibit A are proposed by Gildred Solar, LLC, for the development and use of an approximately 336 acre photovoltaic or concentrated photovoltaic solar farm.

Whereas, to allow for the orderly development and financing of a photovoltaic solar farm, and to protect against disturbance of operations by the potential development of the State of California's mineral reservation, Gildred Solar, LLC, has applied to the Commission for a modification of the State of California's right to enter the surface to a depth of 500 feet. In support of its application, Gildred Solar, LLC, submitted a mineral evaluation report, dated March 2016, concluding no or very low potential for occurrence of commercially valuable minerals upon or under the lands described in exhibit A.

Whereas, the State of California, acting by and through the Commission, determined, pursuant to California Public Resources Code Section 6401(b), in calendar/minute item C52 at its meeting on August 9, 2016, that there are no known deposits of commercially valuable minerals in and above a plane located 500 feet below the surface of the lands described in exhibit A;

Now therefore, effective the 9th day of August 2016, the State and Gildred Solar, LLC, do hereby agree as follows:

- 1) State of California, acting by and through the Commission, pursuant to the provisions of Public Resources Code section 6401(b), surrenders its right to use or cause to be used, for purposes of

developing its mineral reservation, the surface, including its right to enter such lands to a depth of 500 feet below the surface of the lands described in exhibit A attached hereto, for a period of 30 years commencing August 9, 2016 until August 8, 2046.

- 2) In consideration for the State modifying its rights pursuant to Public Resources Code section 6401(b) to the lands described in exhibit A, Gildred Solar, LLC, agrees to pay to the State an annual fee of \$630.00. The first annual payment shall be made within 30 days of the execution of this agreement and upon each subsequent anniversary thereafter.
- 3) The annual fee specified in paragraph 2 of this agreement will be adjusted annually by the Consumer Price Index as specified in title 2, California Code of Regulations Section 1900(m) & (n). The Commission will provide a courtesy invoice 30 days prior to the date the fee is due specifying the updated fee amount at the address currently on file for Gildred Solar, LLC. If the Commission does not send a courtesy invoice, Gildred Solar, LLC, shall submit a payment in the amount of the prior year's annual fee when due and contact the Commission within 30 days to determine the balance due.

This modification of the State's right of surface entry is executed by and on behalf of the State of California by the Commission, acting pursuant to law, as approved and authorized by its calendar/minute item No. C52 of its regular public meeting on August 9, 2016 by its duly authorized undersigned officer, this _____ day of _____ 2016.

Gildred Solar, LLC.

State of California

California State Lands Commission

By:_____

By:_____

Name:_____

Jennifer Lucchesi

Title:_____

Executive Officer

Date:_____

Date:_____

Address:

Address:

100 Howe Ave, Suite 100 South
Sacramento, CA 95825

EXHIBIT A

W 40983

LAND DESCRIPTION

That certain parcel of State School Land in San Diego County, State of California, more particularly described as follows:

The SW $\frac{1}{4}$ of SW $\frac{1}{4}$, the E $\frac{1}{2}$ of SW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of Section 36, Township 12 South, Range 8 East, San Bernardino Meridian, as shown on that Official U.S. Government Township Plat approved January 16, 1885.

END OF DESCRIPTION

Prepared 05/03/2016 by the California State Lands Commission Boundary Unit.

